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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1902.

No. 661.

WHITAKER WRIGHT, APPELLANT,

vs.

WILLIAM HENKEL, UNITED STATES MARSHAL FOR THE SOUTHERN DISTRICT OF NEW YORK, ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

FILED APRIL 11, 1903.

(18,889.)

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., APRIL 13, 1903.

1 To the circuit court of the United States for the southern district of New York:

The petition of Whitaker Wright respectfully shows:

First. Your petitioner is a citizen of the United States and is imprisoned and restrained of his liberty in the county jail of the county of New York in the city and State of New York, in the custody of William Henkel, marshal of the United States for the southern district of New York, by virtue of a warrant dated March 16th, 1903, issued by Thomas Alexander "United States commissioner for the southern district of New York and commissioner duly authorized by the district court of the United States for the southern district of New York, and also commissioner appointed under the laws of the United States concerning the extradition of fugitives from the justice of a foreign government under a treaty or convention between this and any foreign government," a copy of which warrant is hereto annexed and marked "A."

Second. Your petitioner further shows that said warrant was issued by the aforesaid United States commissioner upon a complaint purporting to have been made by Percy Sanderson, His Britannic Majesty's consul general at the port of New York, a copy of which complaint is hereto annexed and marked "B."

Third. That the aforesaid complaint states no facts which create jurisdiction for the issuance of the aforesaid warrant and for the detention of your petitioner; that it does not state any facts

2 which show that your petitioner has been guilty of any offence within the provisions of any extradition treaty between the United States of America and the United Kingdom of Great Britain and Ireland.

Fourth. That your petitioner has duly objected to the continuance of any proceedings under the said complaint and warrant before the said United States commissioner on the ground that the said commissioner has no authority or jurisdiction to proceed therewith on the grounds aforesaid, or under any provisions of the Constitution or laws of the United States, or any treaty of the United States with any foreign country; that said objections have been overruled by the said commissioner and he has adjourned the said proceedings until the 30th day of March, 1903.

Fifth. Your petitioner further alleges that on the 18th day of March, 1903, he presented to the aforesaid United States commissioner an application to be admitted to bail pending the aforesaid proceeding, and in support of said application he filed with said commissioner the affidavit of his attending physician of which a copy is hereto annexed marked "C," which is in all respects true. That the said United States commissioner denied said application on the ground that no power existed for admitting your petitioner to bail, in spite of the fact that an application made by the representative of His Britannic Majesty's consul general at the port of New York for an adjournment of said proceedings until the 30th

day of March, 1903, had been granted, and that it had been
3 stated by said representative that further adjournments would in all likelihood be thereafter applied for.

Sixth. That the cause or pretence of the imprisonment and restraint of your petitioner is that a charge has been made against him as set forth in the aforesaid complaint and warrant, and the decision of the aforesaid commissioner that he has no power to admit your petitioner to bail on the charge which has been made against him as aforesaid.

Seventh. Your petitioner is informed by counsel, and verily believes, his imprisonment and detention as aforesaid is illegal; that the aforesaid warrant is wholly void; that the aforesaid complaint states no jurisdictional facts to warrant his imprisonment and detention; that the denial to him of the right to give bail constitutes a violation of the eighth amendment of the Constitution of the United States and section 1015 of the United States Revised Statutes, and of the common law of the United States of America, and constitutes a deprivation of your petitioner's liberty without due process of law.

Wherefore, your petitioner prays that writs of *habeas corpus* and certiorari issue directed to the persons having your petitioner in custody, commanding him to produce the body of your petitioner before this court forthwith, and that he return all proceedings against your petitioner to this court for such action thereon as may be proper in the premises.

Dated New York, March 19th, 1903.

WHITAKER WRIGHT, *Petitioner.*

4 GUGGENHEIMER, UNTERMYER & MARSHALL,
Attorneys for Petitioner.

Office & post office address, 30 Broad St., borough of Manhattan, New York city.

UNITED STATES OF AMERICA,
Southern District of New York, County of New York, } *ss:*

Whitaker Wright, being duly sworn, deposes and says, that he has read the foregoing petition and knows the contents thereof, and that the same is in all respects true.

WHITAKER WRIGHT.

Subscribed and sworn to before me this 19th day of March, 1903.

SIMEON G. MANHEIM,
[SEAL.] *Notary Public* 218, *New York County.*

5 "A."

The President of the United States to any marshal of the United States, to the deputies of any marshal or any or either of them:

Whereas, complaint has been made on oath under the treaty between the United States and Her Majesty the late Queen of Great Britain and Ireland, concluded and signed at Washington, on the 9th day of August, 1842, and of the supplementary treaty between the same high contracting parties, signed July 12th, 1889, before me Thomas Alexander one of the commissioners appointed by the district court of the United States for the southern district of New York, and also commissioner especially appointed to execute the acts of Congress, entitled "An act for giving effect to certain treaty stipulations, between this and foreign governments for the apprehension and delivery of certain offenders" approved August 12th, 1848, and of the several acts amendatory thereof, that one Whitaker Wright, did heretofore during the month of October, in the year 1899 and in the months of December, 1900, in the city of London, in that part of the United Kingdom of Great Britain and Ireland, called England, and within the jurisdiction of his said Britannic Majesty, commit the crime of fraud as a director of a company, to wit, did heretofore in the month of October in the year 1899, and in the month of December, 1900, at the city of London aforesaid, then being a director of a certain body corporate to wit, the London and Globe Finance Corporation, unlawfully make, circulate and publish certain reports and statements of accounts of the said corpora-
6 tion, which were false; the said Whitaker Wright then well knowing the said reports and statements to be false, with intent thereby to deceive and defraud the shareholders or members of the said corporation; that the said Whitaker Wright is a fugitive from justice of the Kingdom of Great Britain and Ireland, and is now within the territory of the United States; that the crime of which the said Whitaker Wright has so as aforesaid been guilty is an offence within the treaty between the United States and Great Britain.

Now therefore, we command you forthwith to take the said Whitaker Wright, and bring him before me, the said commissioner, at my office, room 60, in the Post Office building in the city of New York, in order that the evidence of the criminality of the said Whitaker Wright, may be heard and considered, and if deemed sufficient to sustain the charge that the same may be certified, together with a copy of all the proceedings, to the Secretary of State, that a warrant may issue for his surrender pursuant to the said treaty.

Witness my hand and official seal the 16th day of March, 1903.

(Signed) THOS. ALEXANDER,

U. S. Commissioner for the Southern District of New York and Commissioner Duly Authorized by the District Court of the United States for the Southern District of New York, and also Commissioner Appointed under the Laws of the United States Concerning the Extradition of Fugitives from the Justice of a Foreign Government under a Treaty or Convention Between This and Any Foreign Government.

7 "B."

Before Thomas Alexander, Esq., U. S. Commissioner, &c.

In the Matter of the Application for the Extradition of WHITAKER WRIGHT under the Treaty Between the United States and Great Britain.

UNITED STATES OF AMERICA, *Southern District of New York,* } ss:

Percy Sanderson, His Britannic Majesty's consul general at the port of New York, being duly sworn, doth depose and say, upon information and belief:

First. That one Whitaker Wright did heretofore, in the month of October in the year 1899, and in the month of December, 1900, in the city of London, in that part of the United Kingdom of Great Britain and Ireland called England, and within the jurisdiction of said Britannic Majesty, commit the crime of fraud as a director of a company, to wit, did heretofore and in the month of October in the year 1899, and in the month of December, 1900, at the city of London aforesaid, then being a director of a certain body corporate, to wit, the London and Globe Finance Corporation, unlawfully make, circulate and publish certain reports and statements of accounts of the said corporation which were false: the said Whitaker Wright then well knowing the said reports and statements to be false,
8 with intent thereby to deceive and defraud the shareholders or members of the said corporation.

Second. That the said Whitaker Wright is a fugitive from the justice of the Kingdom of Great Britain and Ireland, and is now within the territory of the United States.

Third. That the crime of which the said Whitaker Wright has so as aforesaid been guilty is an offence within the treaty between the United States and Great Britain.

Fourth. That deponent's information and belief are based upon messages received by cable from His Majesty's Secretary of State for Foreign Affairs, one of the said messages stating that a warrant had been issued in England for the apprehension of the said Whitaker Wright for the offence herein charged, and directing deponent to apply for a provisional warrant under the treaty for extradition between the United States and Great Britain.

That deponent has since the apprehension of the said Whitaker Wright yesterday cabled to His Majesty's said foreign secretary for fuller details as to said crime and an answer is directly expected, but that the said Whitaker Wright may be detained, pending the arrival of such information, deponent asks for a provisional warrant herein.

(Signed) PERCY SANDERSON.

Subscribed and sworn to before me this 16th day of March, in the year 1903.

[SEAL.] (Signed) THOS. ALEXANDER,
U. S. Commissioner for the Southern District of New York and Commissioner Duly Authorized by the District Court of the United States for the Southern District of New York, and also a Commissioner Duly Appointed under the Laws of the United States Concerning the Extradition of Fugitives from the Justice of a Foreign Government under the Treaty or Convention Between This and Any Foreign Government.

9 "C."

Before Thomas Alexander, Esq., U. S. Commissioner, etc.

In the Matter of the Application for the Extradition of WHITAKER WRIGHT under the Treaty Between the United States and Great Britain.

UNITED STATES OF AMERICA, *Southern District of New York,* } *ss.:*

Wilhelm Levin, being duly sworn, deposes and says:

I am a physician and surgeon residing at No. 49 East Seventh street, in the city of New York. I am acquainted with the above named Whitaker Wright. I was called to attend him on March 17th, 1903, at about five o'clock in the afternoon by the warden of the New York county jail, where the said defendant is detained.

I examined Mr. Wright and found that he was suffering from an acute attack of bronchitis. He was also suffering from a severe chill. I examined his surroundings, and I state it to be my professional opinion that unless Mr. Wright is forthwith placed under more favorable conditions, his present ailment may develope into pneumonia. He is of such physique, that the confinement from which he is now suffering, will tend greatly to injure his health and to result in serious impairment. The illness from which he is now suffering is greatly aggravated by his imprisonment, and I
10 believe that injury may result to him if such imprisonment continues.

WILHELM LEVIN, M. D.

Sworn to before me this 18th day of March, 1903.

GEO. F. BEHRINGER,
Notary Public, Rockland Co.

Certif. filed in N. Y. Co.

11 (Endorsed:) U. S. circuit court, so. district of New York.—In the matter of the application for the extradition of Whitaker Wright under the treaty between the United States and Great Britain.—Petition for writ of *habeas corpus* and of certiorari.—Guggenheimer, Untermyer & Marshall, attorneys for petitioner, No. 30 Broad street, city of New York.—Read on application March 20, 1903. E. H. Lacombe, U. S. C. J.—U. S. circuit court, southern district of New York, Filed Mar. 20, 1903, John A. Shields, clerk.

12 The President of the United States to William Henkel, marshal of the United States for the southern district of New York, Greeting:

We command you that you have the body of Whitaker Wright, by you imprisoned and detained, as it is said, together with the time and cause of such imprisonment and detention, by whatsoever name the said Whitaker Wright may be called or charged, before a term of the circuit court of the United States for the southern district of New York to be held in the Post Office building in the city, county and State of New York, on the 23rd day of March, 1903, at 1.30 o'clock in the afternoon of that day, to do and receive what shall then and there be considered concerning said Whitaker Wright, and have you then and there this writ; and that at the same time you return all proceedings taken against the said Whitaker Wright.

Witness, Honorable Melville W. Fuller, Chief Justice of the United States, the 20th day of March, one thousand, nine hundred and three.

[SEAL.] JOHN A. SHIELDS, *Clerk.*

GUGGENHEIMER, UNTERMYER & MARSHALL,
Attorneys for Petitioner.

Office and post office address, 30 Broad street, borough of Manhattan, New York city.

(Endorsed:) U. S. circuit court, so. district of New York.—In the matter of the application for the extradition of Whitaker
13 Wright, under the treaty between the United States and Great Britain.—Writ of *habeas corpus* and of certiorari.—Let the within writ issue. Dated N. Y. March 20, 1903. E. Henry Lacombe, U. S. C. J.—Southern district of New York. In compliance with the within writ of *habeas corpus*, I now produce the body of the said Whitaker Wright, before the circuit court of the United States for the southern district of New York. Dated New York, March 23rd, 1903, at 1.30 p. m. William Henkel, United States marshal, southern district of New York.—Remanded until decision of motions argued to-day. March 23, 1903. E. Henry Lacombe, U. S. C. J.

14 In the Matter of the Application for the Extradition of WHITAKER WRIGHT under the Treaty Between the United States and Great Britain.

To the district court of the United States for the southern district of New York:

I, Thomas Alexander, United States commissioner for the southern district of New York, and duly appointed and authorized to act as a commissioner under title 66 of the United States Revised Statutes, in obedience to the foregoing writ of certiorari, do hereby certify

that the papers hereto annexed and returned herewith, contain the records of the proceedings had before me in the above-entitled matter.

Dated New York, March 21, 1903.

THOS. ALEXANDER,

[SEAL.] *U. S. Commissioner, Southern District of New York.*

15 The President of the United States to Thomas Alexander, U. S. commissioner for the southern district of New York and commissioner duly authorized by the district court of the United States for the southern district of New York, and also commissioner appointed under the laws of the United States concerning the extradition of fugitives from the justice of a foreign government under a treaty or convention between this and any foreign government," Greeting:

We command you that you return before a stated term of the circuit court of the United States for the southern district of New York to be held in the Post Office building in the city, county and State of New York, on the 23rd day of March, 1903, at 1.30 o'clock in the afternoon of that day, all proceedings had and taken before you against Whitaker Wright under and pursuant to a warrant issued by you on the 16th day of March, 1903, upon a complaint purporting to have been made by Percy Sanderson, His Britannic Majesty's consul general at the port of New York; and also all proceedings taken before you in said matter upon an application by the said Whitaker Wright to be admitted to bail pending the aforesaid proceeding: and to do and receive what shall then and there be considered concerning the said matters, and have you then and there this writ.

Witness, Honorable Melville W. Fuller, Chief Justice of the United States, the 20th day of March, one thousand nine hundred and three.

JOHN A. SHIELDS, *Clerk.*

GUGGENHEIMER, UNTERMYER & MARSHALL,
Attorneys for Petitioner.

Office & post office address, 30 Broad street, borough of Manhattan, New York city.

16 (Endorsed:) United States circuit court, southern district of New York.—In the matter of the application for the extradition of Whitaker Wright under the treaty between the United States and Great Britain.—Writ of certiorari.—Let the within writ issue. Dated N. Y., March 20th, 1903. E. H. Lacombe, U. S. C. J.

17 Before Thomas Alexander, Esq., U. S. Commissioner, &c.

In the Matter of the Application for the Extradition of WHITAKER WRIGHT under the Treaty Between the United States and Great Britain.

UNITED STATES OF AMERICA, } ss:
Southern District of New York, }

Percy Sanderson, His Britannic Majesty's consul general at the port of New York, being duly sworn, doth depose and say, upon information and belief:—

First. That one Whitaker Wright, did heretofore and in the month of December, 1900, in the city of London, in that part of the United Kingdom of Great Britain and Ireland, called England, and within the jurisdiction of his said Britannic Majesty, commit the crime of fraud as a director of a company, to wit, did heretofore and in the month of October, in the year 1899, and in the month of December 1900, at the city of London, aforesaid, then being a director of a certain body corporate, to wit, the London and Globe Finance Corporation, unlawfully make, circulate, and publish certain reports and statements of accounts of the said corporation, which were false; the said Whitaker Wright, then well knowing the said reports and statements to be false, with intent thereby to deceive and defraud the shareholders or members of the said corporation.

18 Second. That the said Whitaker Wright, is a fugitive from the justice of the Kingdom of Great Britain and Ireland, and is now within the territory of the United States.

Third. That the crime of which the said Whitaker Wright has so as aforesaid been guilty, is an offence within the treaty between the United States and Great Britain.

Fourth. That deponent's information and belief are based upon messages received by cable from His Majesty's Secretary of State for Foreign Affairs, one of the said messages stating that a warrant had been issued in England for the apprehension of the said Whitaker Wright for the offence herein charged and directing deponent to apply for a provisional warrant, under the treaty for extradition, between the United States and Great Britain.

That deponent has since the apprehension of the said Whitaker Wright yesterday, cabled to His Majesty's said foreign secretary for uller details as to said crime, and an answer is directly expected, but that the said Whitaker Wright may be detained, pending the arrival of such information, deponent asks for a provisional warrant herein.

PERCY SANDERSON.

Subscribed and sworn to before me this 16th day of March, in the year 1903.

[SEAL.] THOS. ALEXANDER,
U. S. Commissioner for the Southern District of New York and Commissioner Duly Authorized by the District Court of the United States for the Southern District of New York, and also a Commissioner Appointed under the Laws of the United States Concerning the Extradition of Fugitives from the Justice of a Foreign Government under a Treaty or Convention Between This and Any Foreign Government.

(Endorsed:) Before Thomas Alexander, Esq., U. S. commis-
19 sioner. In the matter of the application for the extradition of Whitaker Wright, under the treaty between the United States and Great Britain.—Complaint.—Charles Fox, att'y for H. B. M. C. G. 3 Broad St. New York.

20 Before Thomas Alexander, Esq., U. S. Commissioner, etc.

In the Matter of the Application for the Extradition of J. WHITAKER WRIGHT under the Treaty Between the United States and Great Britain.

UNITED STATES OF AMERICA, } ss.:
Southern District of New York, }

Wilhelm Levin, being duly sworn, deposes and says: I am a physician and surgeon residing at No. 49 East Seventh street, in the city of New York. I am acquainted with the above named J. Whitaker Wright. I was called to attend him on March 17th, 1903, at about five o'clock in the afternoon by the warden of the New York county jail, where the said defendant is detained.

I examined Mr. Wright and found that he was suffering from an acute attack of bronchitis. He was also suffering from a severe chill. I examined his surroundings, and I state it to be my professional opinion that unless Mr. Wright is forthwith placed under more favorable conditions, his present ailment may develope into pneumonia. He is of such physique, that the confinement from which he is now suffering, will tend greatly to injure his health and to result in serious impairment. The illness from which he is now suffering is greatly aggravated by his imprisonment, and I
21 believe that injury may result to him if such imprisonment continues.

WILHELM LEVIN, M. D.

Sworn to before me this 18th day of March, 1903.

GEO. F. BEHINGER,
Notary Public, Rockland Co.

Certif. filed in N. Y. Co.

(Endorsed :) Before Thomas Alexander, Esq., U. S. commissioner, etc.—In the matter of the application for the extradition of J. Whitaker Wright, under the treaty between the United States and Great Britain.—Affidavit of Dr. Levin.—Guggenheimer, Untermyer & Marshall, attorneys for defendant, No. 30 Broad St. New York city.

22 In the Matter of the Application for the Extradition of WHITAKER WRIGHT under the Treaty Between the United States and Great Britain.

Before United States Commissioner Thomas Alexander, in the United States Court and Post Office Building, in the City of New York, March 16, 1903.

Present: The prisoner. Charles Fox, Esq., for demanding government. Messrs. Guggenheimer, Untermyer & Marshall for the prisoner.

The prisoner arraigned. Examination demanded and set for March 18, 1903, at 3 p. m.

MARCH 18, 1903.

The prisoner not present.

Present: Charles Fox, Esq., for demanding government. Messrs. Guggenheimer, Untermyer & Marshall for the prisoner.

Mr. Marshall moved that the complaint herein be dismissed.

Motion denied.

Mr. Marshall moved that the prisoner be released from custody on bail pending the hearing herein, and submitted the affidavit of Dr. Wilhelm Levin thereon.

Motion argued and submitted.

The commissioner directed counsel to appear before him
23 on March 19, 1903, at 3 p. m. when he would announce his decision upon the motion. Further hearing adjourned to March 30, 1903, at 2 p. m.

ON MARCH 19TH, 1903.

Present: Mr. Fox for the demanding government. Counsel for the prisoner.

The commissioner announced as his decision upon the motion to release upon bail, that he was compelled to deny the same for want of power.

(Endorsed :) U. S. district court, southern district of New York.—In the matter of the application for the extradition of Whitaker Wright a fugitive from England.—Return to certiorari.—U. S. circuit court, southern district of New York, Filed Mar. 25, 1903, John A. Shields, clerk.

24 MONDAY, *March* 23, 1903.

Present: Hon. E. Henry Lacombe, circuit judge.

In the Matter of the Application for the Extradition of WHITAKER WRIGHT.

The writs of *habeas corpus* and certiorari in the above entitled matter coming on for argument, Mr. Louis Marshall is heard in support of the writ and certiorari.

Charles Fox, Esq., appeared in opposition thereto.

C. A. V.

25 United States Circuit Court, Southern District of New York.

In the Matter of Extradition of WHITAKER WRIGHT.

Habeas Corpus to Test Sufficiency of Complaint and to Enlarge on Bail.

LACOMBE, *Circuit Judge:*

It may reasonably be assumed that when the phrase "made criminal by the laws of both countries" was inserted in the treaty of 1889 it was perfectly well understood that under our system of government there are certain spheres within which the Federal Government exercises domain, and other spheres in which it cannot intrude, the individual States alone being competent therein. Within its own sphere the Federal Government may make certain acts criminal; without that sphere it is powerless to make equally heinous acts criminal, but it recognizes the power of the State to do so. It seems too narrow a construction of the act to hold that in adding the above-quoted clause to the enumeration: "Fraud by a bailee, banker, agent, factor, trustee, or director or member or officer of any company," the United States was assenting to the proposition that the enumeration must be restricted to the sphere within which the Federal Government was competent to regulate the subject by general laws. If certain

26 fraudulent acts, by a trustee of real estate for instance, were made criminal, in identical language, by the laws of every State in the Union the treaty, if thus interpreted, would not apply, so long as there was no Federal statute which covered the case; although Congress under the Constitution might not be competent to enact such a statute. When by the law of England and by the law of the State in which the fugitive is found the fraudulent acts which it is charged he has committed are made criminal he is fairly within the treaty: a statute of the State is, broadly speaking, "a law of this country" as contradistinguished from a "law of Great Britain."

The complaint, in somewhat inartificial language, charges that the petitioner, being then a director of a specified finance corporation, did make, circulate and publish certain reports and statements of ac-

counts of the said corporation, which were false, and which he knew to be false,—with the intent thereby to deceive and defraud. This charge is within the sections cited (83 & 84) from chap. 96 XXIV and XXV Victoria, and also within section 611 of the Penal Code of New York, subdivision 3. The application to discharge from custody is, therefore, denied without prejudice to its renewal when the evidential papers arrive, and the precise acts complained of are more specifically set forth.

The application to admit to bail is denied briefly for the following reasons.

1. The only case found in our reports, which deals with
27 the subject of bail in international extradition proceedings is adverse to petitioner. *In re* Carrier 57 F. R. 578.

2. Applications to admit to bail in such cases have on several occasions (although not recently) been made to the circuit court in this district, and have been uniformly denied, although no opinions appear to have been written.

3. It is not difficult to conceive of some sufficient reason why the United States, having assumed certain treaty obligations, should provide a scheme for carrying them out which should not provide for enlargement on bail; and we find that, whereas the statutes regulating the arrest of persons in one Federal district who may be charged with crime in another district provide for taking bail, the statute regulating international extradition makes no such provision.

4. The opinion of Lord Russell in Queen *v.* Spillsbury, 2 Q. B. D. (1898) 615, upon which petitioner principally relies and which holds that "the Court of Queen's Bench has, independently of statute, by the common law, jurisdiction to admit to bail" is not persuasive. The opinion concludes with the statement: "This inherent power to admit to bail is historical, and has long been exercised by this court, and if the legislature had meant to curtail or circumscribe this well-known power, their intention would have been carried out by express enactment." The circuit courts of the United States, however, have no such historical heritage. "These courts are creatures of statute, and they have only so much of the judicial power of the United States as the acts of Congress have conferred
28 upon them." Bath County *v.* Amy, 13 Wall., 244.

The writ is dismissed.

(Endorsed:) Circuit court of the United States for the southern district of New York.—In the matter of extradition of Whitaker Wright.—Opinion, Lacombe, C. J.—U. S. circuit court, southern district of New York, Filed Mar. 25, 1903, John A. Shields, clerk.

29 United States Circuit Court, Southern District of New York.

In the Matter of the Application for the Extradition of WHITAKER WRIGHT under the Treaty Between the United States and Great Britain.

SIRS: Please take notice that the annexed proposed order will be presented to the Honorable E. Henry Lacombe, circuit judge, at his chambers in the U. S. court and P. O. building, in the city of New York, on Monday, March 30th inst., at 11 a. m. for settlement.

Dated New York, March 28, 1903.

Yours &c.,

CHARLES FOX,
Att'y for H. B. M. Consul General,
No. 3 Broad Street, New York.

To Guggenheimer, Untermyer & Marshall, Esqs., attorneys for Whitaker Wright.

30 At a stated term of the circuit court of the United States of America, for the southern district of New York, in the second circuit, held at the United States court rooms, in the city of New York, on Monday, the thirtieth day of March in the year of our Lord one thousand nine hundred and three.

Present: The Honorable E. Henry Lacombe, circuit judge.

In the Matter of the Application for the Extradition of WHITAKER WRIGHT under the Treaty Between the United States and Great Britain.

The above matter having coming on to be heard upon the petition for and the returns to writs of *habeas corpus* and *certiorari* and after hearing counsel for the respective parties, and upon motion of Mr. Charles Fox, of counsel for the complainant in this proceeding,

It is ordered that the said writs of *habeas corpus* and certiorari be and each of them is dismissed and the application for release of the accused on bail denied on the ground that there is no power or jurisdiction in this court to admit him to bail and prisoner is remanded to the custody of the United States marshal for the southern district of New York.

E. HENRY LACOMBE,
U. S. Circuit Judge.

31 (Endorsed:) United States circuit court, southern district of New York.—In the matter of the application for the extradition of Whitaker Wright, under the treaty between the United States and Great Britain.—Order.—Charles Fox, att'y for H. B. M. C. G., 3 Broad street, New York.—Service of a copy of the within order admitted this 28th day of March, 1903. Guggenheimer, Untermyer & Marshall, att'ys for petitioner.—U. S. circuit court, southern district of New York, Filed Mar. 30, 1903, John A. Shields, clerk.

32 Circuit Court of the United States, Southern District of New York.

In the Matter of the Application for the Extradition of WHITAKER WRIGHT under the Treaty Between the United States and Great Britain.

I, E. Henry Lacombe, one of the judges of the United States circuit court for the second judicial circuit do hereby certify that upon the hearing of the above cause the construction and application of the treaties between the United States of America and the United Kingdom of Great Britain and Ireland with regard to extradition was fairly raised by the petition herein for writs of *habeas corpus* and certiorari and was argued on the hearing of the same, and was determined by the court; and I further certify that upon said hearing the power and jurisdiction of the United States circuit court under the said treaties and under the United States Revised Statutes and the Constitution of the United States of America, to admit the petitioner to bail pending an examination into his alleged criminality, was fairly raised by the petition for writs of *habeas corpus* and certiorari and was argued upon the hearing of the same and was determined by the court.

Dated New York, April 7th, 1903.

E. HENRY LACOMBE, *U. S. C. J.*

33 (Endorsed:) United States circuit court, southern district of New York.—In the matter of the application for the extradition of Whitaker Wright, under the treaty between the United States and Great Britain.—Certificate.—Louis Marshall, attorney for petitioner, 30 Broad street, New York city.—U. S. circuit court, southern district of New York, Filed Apr. 7, 1903, John A. Shields, clerk.

34 Circuit Court of the United States, Southern District of New York.

In the Matter of the Application for the Extradition of WHITAKER WRIGHT under the Treaty Between the United States and Great Britain.

To the Supreme Court of the United States:

The petition of Whitaker Wright respectfully shows:

First. That your petitioner is unlawfully imprisoned and illegally restrained of his liberty in the jail in the city, county and State of New York commonly known as Ludlow Street jail and is in custody in violation of the treaty between the United States of America and the Kingdom of Great Britain ratified in 1842, and the treaty supplemental thereto ratified by the respective governments in 1889, William Henkel, marshal of the United States for the southern district of New York, claiming or pretending to so restrain your petitioner by virtue or authority of a certain warrant of commitment to him

alleged to have been issued by one Thomas Alexander, United States commissioner for the southern district of New York, and also commissioner appointed under the laws of the United States concerning the extradition of fugitives from the justice of a foreign government under a treaty or convention between this and any foreign government, which charges your petitioner with the
35 commission of the crime of fraud as a director of a company, alleged to have been committed by your petitioner in the city of London, United Kingdom of Great Britain and Ireland.

Second. That your petitioner was arrested by the said William Henkel, United States marshal for the southern district of New York, upon the aforesaid warrant, which warrant was issued upon the complaint of His Britannic Majesty's consul general at the port of New York, Sir Percy Sanderson.

Third. That your petitioner was arraigned before the aforesaid Thomas Alexander, United States commissioner, upon the aforesaid charge, and thereupon moved for a dismissal of the complaint and for his discharge, and objected to the continuance of any proceedings under the said complaint and warrant before the said United States commissioner on the ground that the said commissioner had no authority or jurisdiction to proceed therewith because said complaint stated no facts which created jurisdiction for the issuance of the aforesaid warrant and for the detention of your petitioner, and that it did not state any facts which showed that your petitioner had been guilty of any offence within the provisions of any extradition treaty between the United States of America and the United Kingdom of Great Britain and Ireland, and that the said commissioner had no authority or jurisdiction to proceed under the aforesaid complaint and warrant, or under any provision of the Constitution or laws of the United States, or of any treaty of the
36 United States with any foreign country. Said objections were thereupon overruled by the said commissioner.

Fourth. Your petitioner further alleges that he thereupon presented to the aforesaid United States commissioner an application to be admitted to bail pending the aforesaid proceedings, and the said United States commissioner denied the said application on the ground that no power or jurisdiction existed for admitting your petitioner to bail.

Fifth. Thereupon, on the application of the counsel for the representative of His Britannic Majesty, further proceedings before the said United States commissioner were postponed until April 8th, 1903, to await the arrival of depositions from England and your petitioner is informed that further applications to delay the hearing before the said commissioner as to his alleged criminality will be made on behalf of the prosecution.

Sixth. Thereafter, upon a petition setting forth the facts hereinbefore related, dated the 19th day of March, 1903, your petitioner sued out writs of *habeas corpus* and certiorari in the circuit court of the United States in and for the southern district of New York, said writ of *habeas corpus* commanding the said William Henkel, United States marshal for the southern district of New York, to

have the body of your petitioner, together with the time and cause of your petitioner's imprisonment and detention, and the said writ of certiorari commanding Thomas Alexander, United States commissioner, to certify the entire record of the proceedings had before him; and both of the aforesaid writs were made returnable
37 before the circuit court of the United States at a stated term thereof which was held on the 23rd day of March, 1903.

Seventh. Your petitioner was duly brought before the said circuit court of the United States by the said William Henkel, United States marshal for the southern district of New York, at the time mentioned in the said writ, and he made the return as required by the terms of the said writ, and the aforesaid Thomas Alexander, United States commissioner, made his return to the aforesaid writ of certiorari to the said court as required by the terms thereof.

Eighth. After hearing arguments of counsel decision was reserved by the court, and thereafter, on the 30th day of March, 1903, an order was entered dismissing the said writs of *habeas corpus* and certiorari and remanding your petitioner to the custody of the said William Henkel, United States marshal for the southern district of New York; and the application for the release of your petitioner on bail, which was also then and there argued, was denied on the ground that there was no power or jurisdiction in the United States circuit court to admit him to bail.

Wherefore, your petitioner, feeling himself aggrieved by said order, appeals therefrom to the Supreme Court of the United States and prays that this appeal may be allowed and that the transcript of the said order and of all of the proceedings in the United States circuit court in and for the southern district of New York, and of the return of the said William Henkel, United States marshal, to the said writ of *habeas corpus* and the return of the said Thomas Alex-
38 ander, United States commissioner, to the said writ of certiorari, may be transmitted to the Supreme Court of the United States for review.

Dated New York, April 1st, 1903.

WHITAKER WRIGHT, *Petitioner.*

LOUIS MARSHALL,
Attorney for Petitioner, 30 Broad Street, New York City.

UNITED STATES OF AMERICA, *Southern District of New York,* } ss:

Whitaker Wright, being duly sworn, deposes and says: That he is the petitioner above named; that he has read the foregoing petition and knows the contents thereof and that the same is true of his own knowledge except as to the matters therein stated to be alleged upon information and belief, and as to those matters he believes it to be true.

WHITAKER WRIGHT.

Subscribed and sworn to before me this sixth day of April, 1903.

HYMAN ROSENSCHEIN,
Notary Public, N. Y. Co.

[SEAL.]

(Endorsed:) United States circuit court, so. district of New York.—In the matter of the application for the extradition of Whitaker Wright, under the treaty between the United States and
39 Great Britain.—Petition for appeal.—Louis Marshall, attorney for petitioner, 30 Broad street, New York city.—The within appeal is hereby allowed. April 7, 1903, E. Henry Lacombe, U. S. C. J.—Service of a copy of the within petition for appeal is hereby admitted. Dated New York, Ap'l 7, 1903, Chas. Fox, attorney for H. B. M. C. G.—U. S. circuit court, southern district of New York, Filed Apr. 8, 1903, John A. Shields, clerk.

40 Circuit Court of the United States, Southern District of New York.

In the Matter of the Application for the Extradition of WHITAKER WRIGHT under the Treaty Between the United States and Great Britain.

And now comes the petitioner, Whitaker Wright, by Louis Marshall, his counsel, in connection with his petition of appeal from the order entered herein on the 30th day of March, 1903, dismissing the writs of *habeas corpus* and certiorari herein, and makes and files the following assignments of error:

The court erred:

First. In dismissing the writs of *habeas corpus* and certiorari and remanding the petitioner.

Second. In holding that the petitioner is lawfully held in custody.

Third. In holding that the crime charged against the petitioner is one which is extraditable within the provisions of article I, subdivision 4, of the extradition treaty of 1889 between the United States of America and the United Kingdom of Great Britain and Ireland.

Fourth. In holding that the crime charged against the petitioner is one which is made criminal by the laws of both the United States of America and the United Kingdom of Great Britain and Ireland.

41 Fifth. In holding that the crime charged against the petitioner, to wit, the commission of fraud by a director of a company, is made criminal by the general laws of the United States as distinguished from the local legislation of some of the particular States of the Union.

Sixth. In holding that it is sufficient to make fraud by a director extraditable if by the law of the State of New York, where the petitioner was arrested, such act is made criminal, irrespective of the question as to whether or not it is made criminal by the general law of the United States.

Seventh. In holding that by subdivision 3 of section 611 of the Penal Code of the State of New York there was prescribed a crime which is the equivalent of the crime charged in the complaint and

warrant on which the petitioner was arrested to have been committed by him in England.

Eighth. In holding that the crimes described in XXIV and XXV Victoria, chapter 96, section 84, and in subdivision 3 of section 611 of the Penal Code of New York, were the equivalent of each other.

Ninth. In holding that no power or jurisdiction exists to admit your petitioner to bail pending the examination into his alleged criminality.

Tenth. In holding that the United States circuit court has no inherent power to admit the petitioner to bail during the pendency of the extradition proceedings against him.

Eleventh. In holding that the provisions of the extradition
42 treaty between the United States of America and the United Kingdom of Great Britain and Ireland, or the acts of Congress regulating such proceedings, contain any prohibition against the admission of the petitioner to bail pending said proceedings.

Twelfth. In holding that section 1015 of the United States Revised Statutes does not entitle the petitioner to be admitted to bail pending said extradition proceedings.

Wherefore your petitioner prays that the order dismissing the said writs of *habeas corpus* and certiorari and remanding your petitioner to the custody of William Henkel, United States marshal for the southern district of New York, and denying his right to be admitted to bail, be reviewed and that your petitioner be discharged from custody.

WHITAKER WRIGHT,
By LOUIS MARSHALL,
His Attorney, Petitioner.

LOUIS MARSHALL,
Attorney for Petitioner, 30 Broad Street, New York City.

(Endorsed:) United States circuit court, so. district of New York.—In the matter of the application for the extradition of Whitaker Wright, under the treaty between the United States and Great Britain.—Assignment of errors.—Louis Marshall, attorney for petitioner, 30 Broad street, New York city.—U. S. circuit court, southern district of New York, Filed Apr. 7, 1903, John A. Shields, clerk.

43 Circuit Court of the United States, Southern District of New York.

In the Matter of the Application for the Extradition of WHITAKER WRIGHT under the Treaty Between the United States and Great Britain.

Know all men by these presents, that we Whitaker Wright, principal, and Anton J. Dittmar, surety, are held and firmly bound unto the United States of America in the full and just sum of two hundred and fifty dollars to be paid to the United States of America; for which payment well and truly to be made we bind ourselves, our

heirs, executors and administrators jointly and severally firmly by these presents.

Sealed with our seals and dated this sixth day of April, nineteen hundred and three.

Whereas, lately at a stated term of the circuit court of the United States for the southern district of New York, in a proceeding therein pending, an order was entered dismissing a writ of *habeas corpus* and of certiorari sued out by the said Whitaker Wright as petitioner, and remanding the said petitioner to the custody of William Henkel, United States marshal for the southern district of New York and denying his application to be admitted to bail pending the extradition proceedings upon which he has been arrested and is in the custody of the said United States marshal; and the said petitioner having appealed to the Supreme Court of the United
44 States and his appeal having been allowed, and a copy of his petition for appeal having been filed in the clerk's office of the United States circuit court for the southern district of New York in order to obtain a review of the aforesaid order.

Now, the condition of the above obligation is such, that if the petitioner Whitaker Wright shall prosecute his appeal to effect and shall answer all questions if he shall fail to make the said appeal good, then the above obligation to be void, otherwise to remain in full force and effect.

WHITAKER WRIGHT.
A. J. DITTMAR.

STATE OF NEW YORK, } ss:
County of New York, }

Anton J. Dittmar, surety to the foregoing undertaking, being sworn, says that he is a resident and householder within the State of New York, and is worth the sum of five hundred dollars over all the debts or liabilities which he owes or has incurred, and exclusive of property exempt by law from levy and sale under an execution.

A. J. DITTMAR.

Sworn to before me this 6th day of April, 1903.

LOUIS MALTHANER,
Notary Public, Kings Co.

[SEAL.]

Certificate filed in New York Co.

45 STATE OF NEW YORK, } ss:
County of New York, }

I certify, that on this sixth day of April, 1903, before me appeared the above named Whitaker Wright known to me and to me known to be one of the individuals described in and who executed the above undertaking, and duly acknowledged to me that he executed the same.

HYMAN ROSENSCHEIM,
Notary Public, N. Y. Co.

[SEAL.]

STATE OF NEW YORK, } ss:
County of New York, }

I certify, that on this sixth day of April, 1903, before me appeared the above named Anton J. Dittmar, known to me and to me known to be one of the individuals described in and who executed the above undertaking, and he duly acknowledged to me that he executed the same.

LOUIS MALTHANER,
Notary Public, Kings Co.

[SEAL.]

Certificate filed in New York Co.

(Endorsed:) United States circuit court, so. district of New York.—In the matter of the application for the extradition of Whitaker Wright, under the treaty between the United States and Great Britain.—Security for costs.—Louis Marshall, attorney for petitioner, 30 Broad street, New York city.—The within bond is
46 approved as to form, amount and sufficiency. April 7, 1903.
E. Henry Lacombe, U. S. C. J.—U. S. circuit court, southern district of New York, Filed Apr. 7, 1903, John A. Shields, clerk.

47 UNITED STATES OF AMERICA, }
Southern District of New York. }

To William Henkel, United States marshal for the southern district of New York, and Sir Percy Sanderson, His Britannic Majesty's consul general at the port of New York:

You are hereby cited and admonished to be and appear before the Supreme Court of the United States on or before the 11th day of April, nineteen hundred and three, pursuant to an appeal on the part of Whitaker Wright filed in the clerk's office of the circuit court of the United States for the southern district of New York in a certain suit or proceeding entitled "In the matter of the application for the extradition of Whitaker Wright under the treaty between the United States and Great Britain," to show cause, if any there be, why the decision of the United States circuit court in the said appeal mentioned should not be reversed, modified or corrected and speedy justice should not be done in that behalf.

Given under my hand at the city of New York, southern district of New York, on the sixth day of April, nineteen hundred and three.

E. HENRY LACOMBE,
United States Circuit Judge.

LOUIS MARSHALL,
Attorney for Petitioner, 30 *Broad Street, New York City.*

(Endorsed:) United States circuit court, so. district of New York.—In the matter of the application for the extradition of Whitaker Wright, under the treaty between the United States and
48 Great Britain.—Citation.—Louis Marshall, attorney for petitioner, 30 Broad street, New York city.—Service of a copy of

the within citation is hereby admitted. Dated New York, Ap'l 7, 1903. Chas. Fox, attorney for H. B. M. C. J.—U. S. circuit court, southern district of New York, Filed Apr. 8, 1903, John A. Shields, clerk.

49 UNITED STATES OF AMERICA, } ss:
Southern District of New York, }

I, John A. Shields, clerk of the circuit court of the United States of America, for the southern district of New York, in the second circuit, do hereby certify that the foregoing pages, numbered from one to forty-eight inclusive, contain a true and complete transcript of the record and proceedings had in said court, in the cause entitled In the matter of the application for the extradition of Whitaker Wright under the treaty between the United States and Great Britain, as the same remain of record and on file in my office.

In testimony whereof, I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this 10th day of April, in the year of our Lord one thousand nine hundred and three, and of the Independence of the said United States the one hundred and twenty-seventh.

[Seal of U. S. Circuit Court, South. Dist. New York.]

JOHN A. SHIELDS, *Clerk.*

[Endorsed:] United States circuit court of appeals for the second circuit. In the matter of the application for the extradition of Whitaker Wright under the treaty between the United States and Great Britain. Transcript of record from the circuit court of the United States for the southern district of New York.

Endorsed on cover: File No. 18,889. S. New York C. C. U. S. Term No. 661. Whitaker Wright, appellant, *vs.* William Henkel, United States marshal for the southern district of New York, *et al.* Filed April 11th, 1903.